Supreme Court, U.S.
FILED
OCT 20 2007
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No. 07-817

In The

# Supreme Court of the United States

Lorenzo Vecchioli

*Petitioner*

v.

Borel Private Bank
Deutsche Bank National Company
Union Oil Company of California,

*Respondents*

On Petition For Writ Of Certiorari
To The United States Court Of Appeals For the Ninth Circuit (Case No.05-17290)

## PETITION FOR WRIT OF CERTIORARI

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**Proposal made by plaintiff to settle the dispute with defendants**

Plaintiff proposed and proposes to use the natural gas from the oil reserve to create hot steams to flush the diluent contaminant sitting in the ground deep down to the oil pool by sealed draining system and then pump and separate out the whole at the surface.
To have the land returned back to the family and to use grand father rights for oil permits if it is possible otherwise they would be claims for expropriation, then by a non binding mediation to resolve all remaining issues. Create a fund, the oil extraction permitting to help local inhabitants of the city of Guadalupe to have healthcare.
As well petitioner believe that with the massive oil reserve in the area there are sufficient energies to supply a massive desalinisation plant to produce fresh water and to produce sufficient asphalt to repave all Californian roads.
The environmental approach is of creative, by example, to the global warming the approach would be to look at how to convert polluting gas to create artificial ozone and re-inject it in the atmosphere.

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## Questions Presented for Review

**Introductory statement**

The issue is about an Oil field containing about 280 000 000 barrels in place originally placed in the custody of trustees in trust. This property is located on the edge of the Pacific Ocean containing about 3000 acres which were sold to its lessee the oil operator by the trustees and Lessors after receiving, bribes from such lessee. Lessors abusing their powers as trustees in selling such property sharply undervalued the property values and received an indemnification from lessee to protect Lessor from suit from beneficiaries of such trust so as to seek for their own protection from liabilities after having mismanaged the property and having organized such a transaction. To this intent they accommodated such lessee's fraudulent request to acquire such property at a price totally outside of its real values using single local probate judge to approve a short in rem petition and attempting to prevent any civil trial on the in personam issue of the matter.

An inter partes complaint was filed by plaintiff a beneficiary of such trust, and this present Federal complaint was dismissed by lower courts in breach of international treaties protecting such right to file such complaint. Additionally such treaties are obligating federal government to protect such endangered investment and to intervene. The lower court breached this recent court decision in Re Marshall which removed probate exception on

interpartes personam trust matters. The issues here as well imply the separation between in rem matters and in personam matters.

This petition is also about mutual reciprocity and legal protection of private bilateral investments in each country contracting on those bilateral treaties. In these specific case the United States of America, France, Italy and Europe Union now as for France and Italy.

## Questions

Have the lower courts have breached Bilateral Investment Treaties?

When an investment of a citizen of the European Union in the United States is endangered by some acts breaching treaties within the United States, does the US Government have an obligation to intervene to have such treaties respected?

Lower courts breached the French American treaty 11 UST 2398 Article I, III, IV, VII, XIII (1960)?

The Italian American TIAS 1965 article I, IV, V (1949) and 12 UST 131 Article I (1961)?

Law of court creation intended as original federal jurisdiction, having existed from beginning of the federal government, cannot be impaired by subsequent state legislation creating courts of probate. Original jurisdiction implies original adjudicative rights and preclusive rights opposed to theory as from Manufactured home Cmtys.v. City of San Jose, 420 F.3d 1022, 1025 (9th Circ.2005)

discussed from Ninth Circuit memorandum, at least for trust in personam matters?

The Ninth Circuit holding Manufactured home Cmtys.v. City of San Jose, 420 F.3d 1022, 1025 (9th Circ.2005) (dismissal based on res judicata) (discussing California preclusion law) is in contradiction with the U.S. Supreme Court holding in Marshall v. Marshall (2006). As well with federal original jurisdiction, and with issues of exclusive federal jurisdiction; as but not only, rights established under treaties and under article III of the Constitution?

As resulting from this court holding on the Re Marshall there is a right of federal civil adjudication for in personam matters on trust, and federal civil adjudication. Manufactured home Cmtys.v. City of San Jose, 420 F.3d 1022, 1025 (9th Circ.2005) is in contradiction with such right and affirmation and again in contradiction with this court holding on Re Marshall?

What is the consistency and substance of such right?

The separation between rem and in personam issues on trust matter, jurisdiction and preclusive issue?

Definition and boundaries of what in rem and in personam issues are?

Ninth Circuit memorandum denies the separation of issues in rem and in personam in trust matters?

Is California Probate Code 17000(A) unconstitutional? Does it contradict Marshall v.

Marshall No. 04-1544 ((2006)? As but not only in opposing jury trial and due process for trust inter partes in personam issues ? In retaining exclusively for the State and its probate court exclusive adjudicative rights on trust matters opposing legitimates adjudicative rights from federal court to adjudicate in personam issues? In having a sweeping adjudication of the in personam issue through the probate in rem judgement?

Is California Probate Code &17000(a) in contradiction with these court holdings? 28 U.S.C. &2403(b) might apply.

They are not res judicata because in personam issues were deprived of a fair hearing and of due processes Constitutionally protected and as well protected by specific international treaties, in issues of specific international diversities,

As well those issues in this case were deprived of access to civil court by California Probate Code &17000(a) and by federal probate exception even if abrogated and in contradiction with this court holding on Re Marshall, and in contradiction with jury trial rights.

Ninth circuit erred as the computation of statute of limitations of certain claims involving Deutsche Bank plaintiff always timely filed for all the cause of action in this case which has been hold to court so far. Some claims were made since 1997

As well Ninth Circuit is importing state statute breaching the law of court creation,

Even if computed under state laws, those claims are not barred by the statute of limitations?

Did the Memorandum err with the date of sale of property which was sold the 07/02 /02 and not in 1995?

Deutsch Bank lawyers are members of a consultative committee from Ninth Circuit on rules, is this a potential conflict of interest?

Were Violations were made under the Alien Tort Claims Act and the 1789 judiciary act?

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B) Additionally the probate action in a sweeping adjudication of the inter partes by the in rem created a situation in which the issues in personam were neither fully nor fairly litigated. Page 29

C) The ninth circuit memorandum is following the spirit of the above Probate Code &17000(a) and by such is breaching the constitution and is as well for this point entering in contradiction with Re Marshall and Durfee Page 30

D) Article III gives exclusive jurisdiction to federal court and so petitioner was in no obligation to present those issues in State Probate court Page 30

E) Ninth circuit statement and Manufactured home are conflicting with Exxon, Markham and Re Marshall on this point as it did not contemplate the fundamental distinction between in Rem and in Personam. Page 31

F ) Additionally theses claims in particular those under international treaties are under exclusive federal jurisdiction and federal preclusive rights the one applicable for the scope of res judicata
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*18 USC & 153, & 1001, &981, &656, &1956, 28 USC &1331, &1332, &1350, &1356 &1357, &1441, &2072 30 USC &1601 &1602, 33 USC & 1365, 33 USC &2701, &2702, &2703, &2704, &2705, &2709, &2710, &2716, &2717 (Oil Pollution Act),) 42 USC &6972*
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*Treaty of Amity and Commerce, February 6, 1778, Page 6*

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*Tennessee Coal, Iron & R. Co. v. George, 233 U. S. 354,360 (1914). Page 28*

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*Certiorari*

## Introductory statement

Even if this court has abrogated the probate exception through its decision on Re Marshall, still in the facts the Ninth Circuit is practicing the probate exception with the use of Manufactured *home Cmtys.v. City of San Jose,* 420 F.3d 1022, 1025 (9th Circ.2005). The issue is that original federal jurisdiction, federal adjudicative and preclusive rights, cannot be impaired by subsequent state legislation creating courts of probate. In particular for trust in personam issues, and as in this case prevention of civil and jury trials and protected by treaties rights conferring adjudicative rights to federal system such as French American treaty 11 UST 2398 Article I, III, IV, VII, XIII (1960 French American convention) and Italian American TIAS 1965 article I, IV, V (1949 Italian American convention) 12 UST 131 Article I (1961 Italian American convention) and treaties of the same tenure such as Bilateral Investment Treaties between United States and European Union, providing protection mechanism if a private foreign investor as in this case is victim of " covert expropriation" hide as a transaction.

The Ninth Circuit breached the laws which prohibit the creation of a court that derogates from Federal Jurisdiction (*The law of court creation)* and violated above international treaties.
***Manufactured home Cmtys.v. City of San Jose,* 420 F.3d 1022, 1025 (9th Circ.2005)** applies in this case (a trust inter partes matters) from Ninth Circuit is totally derogative of Federal Jurisdiction. Adding that this case is under diversity and protected by

specific international treaties the derogatory is even bigger.

*"Federal courts, "having existed from the beginning of the Federal government [can] not be impaired by subsequent state legislation creating courts of probate." (Marshall v. Marshall No. 04-1544 Argued February 28, 2006. Decided May 1, 2006)*

*"Vickie seeks an in personam judgement against Pierce ...State courts possess no" special proficiency" in handling such issues" (Re Marshall No 04-1544)*

Vecchioli is presenting this writ of certioraris to the Ninth Circuit order denying petition for rehearing on 25 of July 2007 and to the Ninth Circuit's memorandum filed the 06/13/2007 upholding district court order dismissing Vecchioli complaints as well to all preceding courts orders leading to ninth circuit Memorandum. Notice of Appeal to the ninth circuit was filed on the last 18 of November 2005. Petitioner's complaint for fraud was filed the twenty fourth of June 2005. *The law of court creation* and treaties support that federal preclusive rights are the ones to be applied to the claims alleged and not from successive state legislative probate creation. Based on this court opinion in the Re Marshall (No 04-1544) a probate rem judgment is not preclusive on trust matters in personam issues (Rem in this case has never been approved more than in a notary mode approval from a single judge probate court with no jury). It cannot be a fair proceeding to adjudicate in personam matters and to preclude them, and it would breach *the law of court creation.* The California Probate code &17000(a) is in contradiction with the re Marshall as such code is

restraining trust matter to exclusively probate courts; Is California probate code &17000(a) constitutional, in preventing a civil jury trial for in personam issues and to someone protecting his investment and interests in such properties? (U.S. constitution article III section two, Amendment IV, V, VII, IX, XIV section one)

Is a trust beneficiary in protecting his real property interest entitled in the constitutional provision of a jury trial? It appears that the California Probate Code 17000(a) is in opposition with this right. In trust matters, a probate judgment in rem is not adjudicative to in personam issue, as well if federal standing to jurisdiction is established under diversity. Under French American treaty 11 UST 2398 Article I, III, IV, VII, XIII (1960 French American convention)? Under Italian American treaty: TIAS 1965 article I, IV, V (1949 Italian American convention) 12 UST 131 Article I (1961 Italian American convention) which require most protection to investment and interest to those parties and freedom of access to all degree of court in pursuit of rights. And those rights are as well protected by other treaties as well obligating the Federal court to intervene to protect such investments?

*Manufactured home Cmtys.v. City of San Jose,* 420 F.3d 1022, 1025 (9th Circ.2005) (dismissal based on res judicata) is on contradiction with Re Marshall and is reinstating the probate exception as resulting in having exclusively as law of the case in matter of jurisdiction Cal. probate code& 17000(a), a civil California prohibition for in personam issue to be adjudicated ? The principle of fairness is breached because *Manufactured home Cmtys.v. City of San*

*Jose* implies that petitioner could have filed claims in California probate and civil court. Such is not possible under California civil prohibition to probate matter involving trusts in in-Personam matters, contrary to the right afforded by this court opinion on the Re Marshall which allows in Personam issues to have a civil federal adjudication? (Petitioner California civil claims were dismissed under cal pobate code & 17000(a)). Memorandum of court of appeal is conflicting with re Marshall in denying the separation between rem and matters in personam? The Ninth circuit erred in his memorandum as for the computation of statute limitation for the claims in matters of Deutsche Banks, sale of property did not happen in 1995 but the 07/02/2005. It improperly imported state probates statutes. Claims are of joint tort among the defendants but as well between the actions and the breaches alleged which are all linked.

Basis to this petition for Certiorari

This petition is based on the re Marshall, *the law of court creation* and distinction between rem and in personam on the subject matters. This petition is also based on the French American treaty and the Italian American treaties both those treaties allow freedom to access for all degree of court and most protection for properties.

It is as well based on all Bilateral Investment Treaties between European Union and United States protecting investment properties.

This petition is as well based on constitutional provisions in due process affording a jury trial in all

argument developed in this matter at preceding levels, the arguments developed in the petition for rehearing, opening and reply brief of appeal to the Ninth circuit and all preceding including the plaintiff motion to request facts findings to probate courts after in rem denial, in the filed Complaint in District Court and previously filed but dismissed in California. state civil court. But mostly this petition is based on *the law of court creation* and the separation between rem matters and in personam matters.

**Original complaint filed at district court**

The original complaint filed is a civil in personam damage complaint filed under a diversity claim for jurisdiction; This is a complaint for breach of trust, breach of fiduciary duty, negligence breach of the duty of loyalty, professional negligence , illegal destruction of capacity of oil production, misrepresentation ,inducement, conspiracy, fraud, theft, misapplication, restitution, waste, trespass, nuisance, environmental fraud, misappropriation, unfair competition and declaratory relief, and made under 28 U.S.C. &1331, &1332, &1441,Title 30 U.S.C.&1601, &1602 Title 33U.S.C, &2701, &2702, &2703, &2704, &2705, &2709, &2710, &2716, &2717 (Oil Pollution Act) Title 18 U.S.C.&1001, &981, &656, &1956, Title 33U.S.C. &1365, Title 42 U.S.C. &6972, and under U.S. Treaties 11 UST 2398 Article I, III, IV, VII, XIII U.S. Treaties TIAS 1965 article I, IV, V, and U.S. Treaties 12 UST and U.S. Constitution article III section two, Amendment IV, V, VII, IX, XIV section one.

**Statement of jurisdiction for original complaint filed at district court**

The complaint in federal court has been filed under diversity and under the recent Re Marshall opinion of this court.

Under international US Treaties:
11 UST 2398 Article I, III, IV, VII, XIII (1960 French American convention) TIAS 1965 article I, IV, V (1949 Italian American convention) 12 UST 131 Article I (1961 Italian American convention) the constantly updated Bilateral Investment Treaties between E.U. and the United States. The Treaty of Amity from the 1778, repelled in 1800 but reenacted with the 1803 Treaty on Louisiana (8 STAT 200), The 1822, and 1919 Treaties on navigation and commerce (8 STAT. 278,41 STAT. 1723) impressing continuity in investment protection, and as resulted from such under the Alien Tort Claims Act and the 1789 judiciary act.

**History and facts**

Plaintiff is a remainder beneficiary of the Andre LeRoy Trust ("Andre Trust") and contingent remainder beneficiary of the Eugene Rene LeRoy Trust ("Eugene Trust").

Plaintiff is a grand son of Andre Le Roy which was owner with his brother Eugene Rene Le Roy of the Guadalupe oil field (Home Ranch), which themselves inherited the property from their father and great uncle Theodore Le Roy a prominent businessman in San Francisco in the mid nineteen century. The Le Roy family is a French American family having

activities and investing, in San Francisco and towards California, thank to the 1822 Treaty on navigation and commerce, since 1850 with the use of there trade and shipping company between Paris and San Francisco, and a constant pillar of strong relations between France and the U.S.A. since then. The Property was in the family ownership since around 1870. Plaintiff is a citizen from Italy and France and is a temporary resident in San Francisco California

On March 3, 1994 Deutsche Bank became the Trustee of the Eugene Trust. On July 2, 2002, Borel and Deutsche Bank sold Home Ranch a **3000 ACRES PLOTS OF LAND ON THE HEDGE OF THE OCEAN IN CALIFORNIA'S CENTRAL COAST**, previously under the administration of the Andre Trust and the Eugene Trust, to UNOCAL for a price far below its market value on a rigged sale with voluntary false analysis and expert reports in intent to justify Union Oil terms to settle all claims under the value imposed by Union Oil. Such reports denied the vast amount of oil reserve and valuating oil price under $4 a barrel and giving the surface values and other potential interests for very low to what the real values are.

On April 4, 1980, In Paris France Andre Le Roy a Frenchman executed a Declaration of Trust establishing the Andre Trust to carry some of those specific investments in America. The Andre Trust became irrevocable upon Andre's death on May 15, 1980.On October 30, 1981; Eugene executed a Declaration of Trust establishing the Eugene Trust. In 1992, most of the Le Roy Family Properties was legally divided between the Andre Trust and The Eugene Trust such that each trust owned a 100% fee

interest in specific properties. The only Assets not divided were Home Ranch (Guadalupe Oil Field), and some other properties. The Andre Trust Declaration designated Wells Fargo Bank as the initial trustee. The Andre Trust declaration authorized Eugene to change the Andre Trust trustee by written instrument delivered to the then existing trustee. On May 3, 1984, Eugene appointed Defendant Borel as The successor trustee of the Andre Trust, effective July 2, 1984. Borel continues to serve as trustee of the Andre Trust.

From July 1, 1984 until March 3, 1994, Borel also served as trustee of the Eugene Trust. On March 3, 1994, Borel resigned as trustee of the Eugene Trust, and defendant Deutsche Bank was appointed successor trustee of the Eugene Trust. Since that time, Deutsche Bank has served as the trustee of the Eugene Trust. The terms of this agreement provided or delegated to Deutsche Bank trustee fiduciary duties owed to the Andre Trust, the Eugene Trust and their beneficiaries with respect to these assets. In becoming the Managing Trustee and carrying out its duties under the agreement, Deutsche Bank assumed trustees and fiduciary duties.

All other Vecchioli interest not involved in this case are now under a new trust managed by us trust not a party involved in this case. Borel bank and Deutsch Bank are no more managing any Vecchioli interests except what is involved with those claims. Beneath the Home Ranch is an oil field commonly known as the Guadalupe Oil Field. The Andre Trust and the Eugene Trust were up until the sale of the property to Union Oil Company of California ("UNOCAL"). The lessee under the Guadalupe Lease, UNOCAL estimated that the Guadalupe Oil

Field originally contained approximately 210,000,000 barrels of oil. 1995 studies by the U.S. Geologic Survey and the U.S. Mineral Service confirmed the size of the Oil Pool.

The crude oil found in the Guadalupe Oil Field is extremely viscous. Diluent was delivered from UNOCAL's Santa Maria refinery to the Guadalupe Oil Field via pipelines constructed by UNOCAL pursuant to a Right of Way granted by the Lessors. In total, UNOCAL constructed and agreed to maintain over 100 miles of pipeline on Home Ranch as well more than two hundreds oil wells, but Unocal in breach of its lease let the entire network of pipeline and the whole industrial tool of production degrade.

In December 1985, UNOCAL substantially reconfigured the diluent metering system. In 1988, UNOCAL reported to Borel that diluent was found in the Pacific Ocean tidal waters and shoreline adjacent to Home Ranch. However, UNOCAL claimed that the diluent did not come from the Guadalupe Oil Field. In 1990, UNOCAL again reported to Borel that diluent was found in the coastal waters, but this time UNOCAL admitted that the diluent came from the Guadalupe Oil Field. UNOCAL's disclosure, however, greatly minimized UNOCAL knowledge of the true extent of the environmental damage to Home Ranch. Consequently, UNOCAL limited disclosure's perpetuated the Vecchioli' ignorance of the actual level of contamination at Home Ranch. Later on, it will be discovered after numerous investigations in 1995 that at least 15,000,000 gallons of diluent have leaked from the Home Ranch's diluent pipeline system trough

the years. (Starting from small leaks until progressive exponential leaks as the structure degrade through the years, with the bulk of the leaks in the last years). This investigation included a raid from government agencies on UNOCAL Orcutt office, California headquarters and the seizure of UNOCAL internal company documents relating to the operation of the Guadalupe Oil Field. Following its investigation into UNOCAL operating practices at the Guadalupe Oil Field, the Attorney General of the State of California initiated civil proceedings against UNOCAL for the diluent contamination of Home Ranch in an action entitled People of the State of California, et al v. Union Oil Company of California, dba UNOCAL, San Luis Obispo County Superior Court No. CV 075194. Neither the Andre Trust, the Eugene Trust, Borel, Deutsche Bank, nor the Vecchiolis were parties to any of these proceedings. Of the 210,000,000 barrels of oil which UNOCAL originally estimated the Guadalupe Oil Field contained, only 38,364,151 barrels were extracted prior to the "shutting in" of the Guadalupe Oil Field. From 1986 to 1994, UNOCAL unilaterally curtailed production from the Guadalupe Oil Field and unilaterally terminated production entirely in 1994, all in violation of the Guadalupe Lease. Following UNOCAL reports and disclosures to Borel in 1990, UNOCAL ceased production at the Guadalupe Oil Field. In 1991, UNOCAL resumed crude oil production from the Guadalupe Oil Field on a substantially smaller scale. In 1994, UNOCAL shut down its operations at the Guadalupe Oil Field. Home Ranch and the Guadalupe Lease were Commonly Owned Assets. Under the Guadalupe Lease, as Lessor, the Andre Trust and the Eugene Trust each received 50% of the

royalty payment from oil production. Substances extracted from wells in the Guadalupe Oil Field include crude oil, diluent, water and natural gas. UNOCAL's improper calculations and the massive diluent leakage resulted in underpayment of royalties to the Andre Trust and the Eugene Trust. At no time prior to UNOCAL's public disclosure of the contamination problem, did Borel or its consultants advise the Vecchiolis that the diluent pipeline system on Home Ranch was leaking and resulted in massive environmental contamination to Home Ranch. At no time Borel or their consultants advised the Vecchiolis that UNOCAL was improperly calculating the amount of royalty payments due to the Andre Trust or the Eugene Trust, or that UNOCAL was charging the Trust for diluent which was not used in the extraction process. Borel and its consultants have taken no action to enforce the lease obligations of UNOCAL to the Andre Trust, or otherwise perform its fiduciary duty to the Andre Trust. In early 1994, UNOCAL began negotiating with Borel and Deutsche Bank to purchase Home Ranch. UNOCAL and the Trustees misrepresented to the Vecchiolis, that there were no oil potential remaining in the Guadalupe Oil Field, which could be economically extracted. On April 12, 1995, a Purchase and Sale Agreement and a Settlement Agreement were established between Borel, Deutsche Bank and UNOCAL. The Settlement Agreement included a release of all claims including both environmental claims and claims for unpaid and incorrectly paid royalty payments against UNOCAL in exchange for a payment to the trusts of $8 million and an agreement by UNOCAL to indemnify Borel, Deutsche Bank, the Andre Trust, the Eugene Trust,

and the Trusts' beneficiaries from liabilities associated with UNOCAL diluent spills on Home Ranch, a agreement contingent to Probate Court approval before it could be considered final and consummated.. As such, the Trustees initiated the case entitled: In the Matter of the Andre LeRoy Trust, San Mateo County Superior Court No. 85333. Prior to entering into the Original Agreements with UNOCAL, the Trustees attempted to misadvised the Vecchiolis that all assets of the Andre Trust and the Eugene Trust could be lost if claims were made against the Trusts as owners of Home Ranch because of UNOCAL pollutions of Home Ranch.

As a result, Borel's interests were in conflict with the Andre Trust at the time the Agreements were entered with UNOCAL and continue to be in conflict with the Andre Le Roy Trust, because Unocal became the financial guarantor of the trustees in front of any actions and claims from the beneficiaries against them.

As Managing trustee for the Commonly Owned Assets comprising the Andre Trust and as trustee for the Eugene Trust, Deutsche Bank was responsible for the management and oversight of Home Ranch, including enforcing performance and royalty payment terms of the Guadalupe Lease, and preventing pollution or recovering damage for contamination of Home Ranch. As a result, Deutsche Bank's interests were in conflict with the Trusts at the time the Agreements were entered into with UNOCAL, and continue to be in conflict with the Trusts for the same motive as well described above about for Borel Bank. Beside that at the time of the sell Deutsche was project manager for the merging of a Unocal Oil refinery company subsidiary's and a

Venezuelan state oil company subsidiary's in creating Unoven such creating an ulterior conflict of interest adds with some $200 million of Unocal stocks managed in Deutsche portfolios and that present DB lawyers are members of a consulting committee of the Ninth Circuit on rules.

Section 4.01(b) of both Le Roy Trust Instruments declare that the *"Trustee is well acquainted with the views and policies of [the] Trustor and has had the records and experiences during Trustor's life; and the Trustee shall be expected to continue the same policies so far as possible without interruption."* Section 4.01(c) of both Trust Instruments further declares that the *"real property received by the Trustee hereunder should be retained intact as far as possible, having in mind the views and policies of Trustor referred to above."* Furthermore, Eugene LeRoy declared in a March 16, 1978 letter that it was estimated that the Guadalupe Oil field contained an extensive reserve which should keep the field in production for many more years. And additionally declared that *"[i]t is my intent and desire this use of the property continue for as long as the field can be made productive."* Defendants Borel and Deutsche Bank are, and at all relevant times were, aware of this letter. Defendants Borel and Deutsche Bank voluntarily failed to investigate possible claims against UNOCAL for polluting Home Ranch, including claims for contribution or indemnity and for breach of the Guadalupe Lease. *"The third party or parties shall be treated as the responsible party or parties for purpose of determining liability"* title 33 U.S.C. &2702(d) (1) (a). Those acts and statues would have enabled the Trustees to seek injunctive relief to shift liabilities

inductively to the responsible party, seeking compensatory damages for the trusts and civil penalties on behalf of the Trusts. A major factor in Defendants Borel and Deutsche Bank decision to sell Home Ranch was UNOCAL agreement's to indemnify the Trustees of Home Ranch for liabilities associated with UNOCAL polluting activities. In the management and oversight of Home Ranch for which Defendants Borel and Deutsche Bank were well compensated, the Defendants unlawfully delegated their duties as Trustee and Managing Trustee to their attorneys and consultants, which knew well the Unocal will, as Unocal was ultimately their financial guarantor, the payer of their legal fees under an agreement, and their protector from any liabilities. Because Trustees has little risk to be sued by a third party but a risk to be sued for damage by their own beneficiaries the indemnification gave to the trustees by Unocal was mostly in versus against the beneficiaries of the trust which might claim against the trustees for damages, and for this reason Unocal has been paying the legal fees of the trustees .Therefore in exchange of this payment and protection from Unocal trustees will meet every Unocal demands indifferently if those demands conflict or not with their trustees fiduciaries duties acting in a reckless indifferences of the interest of beneficiaries, and by such becoming a full accomplice of Union Oil. Following the second remand from the Court of Appeals of the Approval Action in 2001, in an attempt to keep the property in the family as Andre intended, the Vecchiolis submitted to Borel an offer to purchase Home Ranch. Because the trustees obstinately declared in court they are no values over $8 million The Vecchiolis offered to pay the Andre

Trust and Eugene Trust a total of $13.5 million, and to purchase a $100 million insurance policy for a period of ten years, and to release the Trusts, Trustees, and Beneficiaries of all potential claims relating to Home Ranch, in exchange for 100% fee title to Home Ranch, including all mineral rights and claims the Trusts may have against UNOCAL, and all other possible rights as development rights, agricultural uses, construction material rights as sand, natural resources or water rights. The new purchase price of $13.735 million stated in the 2002 UNOCAL Agreements certainly suggests that the Trustees approached UNOCAL with the Vecchiolis' offer and demanded that UNOCAL beat it so that they could sell the property to UNOCAL rather than to the Vecchiolis, although trustees never had any intention to sell the property to the Vecchiolis but in furtherance of their pact with Unocal they had only raised the price to save the appearance of what was already set-up. But as well it had shown how the agreements between the Trustees and Unocal against the trust beneficiaries worked well above any other considerations. By unilaterally entering and consuming the 2002 UNOCAL Agreements, facts were materially changed; in 2003 the court of appeal remanded the trustees' 1995 approval. During the 1998 rem probate proceedings trustees' lawyers declared that oil industry was a depressed industry and that oil price would never raise about $10 a barrel and such would justify the sale. Vecchioli contested such statement and always opposed the trustees Unocal deal. Trustees induced probate court to believe that the Vecchioli expert was producing an inflated computer simulation because he forecasted a future potential extraction based on

an Oil price of barrel from $12 which would continue to grow, and trustees' lawyers asserted the Vecchioli expert projections to be purposely exaggerated to prevent their deal. History with now above $80 a barrel for light crude has shown that Vecchioli expert was cautious and proved to be true as for the oil potential in the future, the issue in the model was to show that trustees have deliberately underestimated oil prices making a false testimony to portray to probate court that Oil industry was a depress industry to justify their deal with Unocal. From this Trustees' inducement to probate court prove historically wrong by current Oil price, Trustees and Unocal are claiming in all courts notwithstanding any derogatoriness that there is Re Judicata for all pending issues. In 2002 Vecchioli expert evaluated the Oil reserve above one billion dollars, oppose to trustees sale price of $13 million.

After the property sale on 2002, Vecchioli filed the federal complaint for damage in trust in personam matters.

**Breaches and actions committed against the trust and plaintiff's interests by the trustees and Unocal**

Trustees breached: In entering into the 2002 Unocal Agreements to sell Home Ranch for consideration disproportionately under its value, miss considering the value of the crude oil and other hydrocarbon substances which currently remain under Home Ranch; its real estate and other values. Trustees with Unocal deliberately with intent failed; to evaluate the potential economic value of the Guadalupe Oil Field prior to UNOCAL's premature

sealing of the oil wells; to oversee UNOCAL's operations on Home Ranch including: Failing with intent to audit UNOCAL's records relating to production and royalties payments due at the Guadalupe Oil Field; to prevent UNOCAL from "cementing in" or otherwise unreasonably curtailing production at the various wells on Home Ranch without obtaining verification of UNOCAL's claims that oil could no longer be economically extracted from said wells at the Guadalupe Oil Field; to require that UNOCAL complies with the terms of the Guadalupe Lease; to recover damages from UNOCAL for damage to the real property of Home Ranch from the diluent contamination; to conduct an environmental assessment or otherwise physically inspect Home Ranch for and discover the environmental damage done and enforce remediation ; to request or obtain from UNOCAL sufficient information to audit and confirm the accuracy of royalty payments and diluent charges made by UNOCAL; to conduct a complete legal and economic analysis as to all claims against UNOCAL before entering into the Original Agreements and the 2002 UNOCAL Agreements; to disclose to beneficiaries of the Andre Trust the truth regarding the respective liabilities of the Andre Trust, Borel, Deutsche Bank and the beneficiaries for claims arising out of the contamination of Home Ranch by UNOCAL; to pursue claims for damages against UNOCAL for the cost of returning the Guadalupe Oil Field to production after it wrongfully "cemented in" all producing wells; to market the operating rights of Guadalupe Oil Field to a party other than Unocal, a company which had waived its right to drill for oil at Home Ranch by "cementing in" the producing wells.

If the Trustees had marketed the operating rights of Guadalupe Oil Field to a party other than Unocal, the Trustees would have been able to secure a continuing source of royalties for the Trusts; this has caused injury and damage to the Andre Trust and the Eugene Trust. With deliberate intent the surface value of home ranch a plot of 3000 acres on the hedge of the ocean was deliberately underestimates by the trustees. UNOCAL had an active participation in a conspiracy to defraud the trust, to its own personal financial advantage. At all defendant UNOCAL actively participated in and abetted Borel and Deutsche Bank in their breaches of trust. UNOCAL was aware that the 2002 Agreements violated the provisions of the Trust. UNOCAL was further aware, in agreeing to the 2002 sale of Home Ranch, that the Trustees were breaking their promise to the Beneficiaries to obtain court approval prior to transferring the property. On information and belief, UNOCAL actively participated in the drafting of the 2002 UNOCAL Agreements that eliminated the court approval procedure, thereby depriving the Vecchiolis of judicial review of the Trustees' actions. UNOCAL further actively participated in the breach of trust by colluding with Borel and Deutsche Bank to mislead the Vecchiolis to the true extent of the contamination of Home Ranch. By agreeing to pay Borel and Deutsche Bank's legal and consultant fees against the Vecchiolis, UNOCAL encouraged Borel's and Deutsche Bank's disregard of their fiduciary duties to the Vecchiolis. UNOCAL acted to further its own economic interests by inducing Borel and Deutsche Bank to sell Home Ranch for well below its market value. Following the execution of the 2002 UNOCAL Agreements and close of escrow, UNOCAL's receipt of

property from Borel and Deutsche Bank, UNOCAL took title to Home Ranch from Borel and Deutsche Bank with full knowledge of the breaches. Borel and Deutsche Bank's agreement to eliminate the requirement of Probate Court approval provided UNOCAL with actual knowledge of the breach of trust. Unocal in exchange to protect the trustees versus its own beneficiaries and to set up a litigation fund for the defense of the trustee made understand to them that the oil and gas reserve should not be investigate as far their true size and to be considered of no values, as well for the real estate value and for the value of all potential claims.
The trustee did not make a claim for the actual damages and other environmental claims in behalf of the trust because they feared their own liabilities. When Unocal would become the exclusive financial guarantor and protector of the trustees, it is important to consider that trustees had no independent insurance and UNOCAL was in effect bribing the trustees to make an unfair sale for their own financial protection.

Unocal directly acted with reckless negligence and knowledge of the fact it destroyed the trust asset and polluted the property and directly conspired with the trustees to defraud the trust of its asset and claims.

**Procedural history of the probate action in rem (1995-2005)**

To a full history of the rem probate action preceding this federal complaint for damage ( please see exhibits) Consummation of the original Sale and Settlement Agreements was contingent upon the San Mateo Superior Court's review and approval of the Agreements pursuant to the Probate Code. This procedure was promised by Borel on May 4, 1995 when it filed its Petition for Approval. But without obtaining such final approval **In July 2002 the sale of the property was consummated.** In December 2003 the first State of California district court of appeals stated that *"The trial court's judgment is reversed, and the matter is remanded with directions to the trial court to dismiss the approval action as moot "*, following the court decision the stay on the damage complaint filed in 1997 against Deutsch Bank and Borel by the Vecchiolis was lifted by court, and a fourth amended complaint of damage was filed in November 2004 against all three defendants and as well a fourth amended rem petition against Borel and Unocal. The probate court dismissed the state civil fourth amended inter partes complaint for damage and torts in June 2005 arguing that the civil court does not have jurisdiction on the in personam subject matter under California probate code &17500. The probate judge as well had denied in May 2005 the fourth amended petition in Rem with no evidentiary hearing and no findings of facts. When a request of finding of facts was not answered by the probate court Vecchioli filed timely a state appeal in the 28 of May 2005, Vecchioli filed the present complaint the 06/24/2005, and dismissed the

probate rem appeal the 19 of July 2005. "the *pendency of an action in the state court is no bar to proceedings concerning ... in the Federal court having jurisdiction." Id. at 1526-27 (quoting McClellan v. Garland, 217 U. S. 268, 282* (1910))." Of course in this case they were no pendency in state court but rather in probate, as &17000(a) deprived plaintiff of state civil court and the matters are different, as the difference between rem and in personam and that "*Federal jurisdiction over an action does not terminate automatically on the entry of judgment in the state court." Id. (emphasis added) (citations omitted) Exxon Mobil Corp v. Saudi Basic Indus. Corp., 125 S. Ct. 1517 (2005).* Even more on this case where a probate judgment on Rem cannot derogate of a Federal adjudication on in personam trust issues and its assets are protected by international treaties. Beside that California court of appeals has always refuse to approve the rem probate petition presented by trustees during their eight years attempt.

**History of the arguments**

In the opening brief of appeals filed the 03/20/06 Vecchioli developed the following arguments:

I: There is no "probate exception" to federal subject matter jurisdiction over an inter partes tort action. The Supreme Court has consistently recognized broad federal jurisdiction over Probates related claims. II: The Supreme Court historically has recognized only narrow limitations on Federal Probate Jurisdiction, which does not apply here. A. Statutory diversity limitations 1. The inter partes

requirement 2. The diverse party requirement. 3. The common law or equity requirement. B. The "Williams doctrine." III: State Law cannot constrict Federal Jurisdiction over probate-related matters IV: This court should reconsider the "Probate exception" posited by the district court A. The Interference Test 1. The interference test is fundamentally inconsistent with Markham, on which it ostensibly is based 2. The interference test conflates preclusion and jurisdiction B. The State Law Test 1. The state law test violates the U.S. supreme Court's repeated holding that federal probate jurisdiction does not depend on state law 2. The state law test is fundamentally inconsistent with the precedents on which it ostensibly is based. VI: Probate exception in this case is conflicting with plaintiff establishment of right under U.S. Treaties and article III section two of U.S. Constitution VII: Under VII Amendment, in suit at common law, where the value in controversy shall exceed twenty dollars, the rights of trial by jury shall be preserved; the probate exception is conflicting with the IV, V, VII, IX, XIV, and Amendment of U.S. Constitution

Then on its reply brief of appeals filed the 06/29/2006 Vecchioli stated:
A: Records were not authentified as the law required for a full faith and credit issue; record are not admissible for preclusion issues. Banks and Union Oil did not raise such in a cross appeal (neither in their reply); they are now precluded from doing so.
B: Vecchioli did not waived arguments on preclusions issues in his opening brief.

C: Respondents are making denovo arguments and are changing the subject matter of the district court decision .trustees and UNOCAL briefs are out of subject and are precluded by appellate rules to produces new arguments.
D: The district court did not preform the test required to address preclusion issues; the district court did not perform the test because the centrality of its decision and the law of the case was the ninth circuit opinion on the re Marshall (holding probate exception). Bank and Union Oil are precluded to require such test to be performed anymore as they should have raised the issue in a cross appeal
E: District court erred in considering California laws the applicable law for the scope of Res Judicata. The Federal action is of unmixed laws with the probate. Action and the issues are different, the probate action was in rem the federal action is an in personam action
F: The Federal in personam action does not interfere with the Rem probate matters. Assuming the matter would be the same (which is not*)"The pendancy of an action in state court is no bar to proceedings concerning the same matter in the federal court having jurisdiction" (MC QUELLAN V GARLAND, 217 U.S. 268, 282 (1910)* VECCHIOLI IN THE PROBATE REM PROCEEDING RAISED WHAT COULD BE RAISED UNDER CALIFORNIA PROBATE &17000(A)
G: The probate Rem action is not preclusive to the federal interpartes in personam torts action.
H: Supreme court opposing a sweeping interpretation of the probate exception worries of abuses, if a probate rem action is treated as sweeping preclusion toward a torts in personam action which would result in a deny of justice. In reversing the law of the case

the Supreme Court has opposed a situation of double standard and special privilege recalling that equality is a fundamental principle of justice.
I: The law of the case in which district court based its decision was reversed, on the 05/01/06, district court judgment and order is void.
J: the federal inter partes in personam torts action in this case is of exclusive federal jurisdiction. Sweeping adjudication of the rem action toward the inpersonnnam action would denies full and fair opportunities to the tort action in personam as the probate court limited itself to in rem and denied any jurisdiction and to the full and fair opportunities that would exist in an in personam action.
K: Deutsche Bank is erring in still supporting a sweeping interpretation of the probate exception ignoring the Supreme Court opinion on the Re Marshall. No statutes of limitation are baring the claims of the complaint including those quoted by Deutsch Bank.

Then Vecchioli presented the following arguments at the petition for rehearing filed the 06/18/07 following Ninth Circuit memorandum:
There is a factual mistake as for the date of the sale of the subject property on the computation of time for purpose of statute limitation on the claims involving Deutsche Bank in the management of the property.
Memorandum is conflicting with the Supreme Court ruling on the re Marshall. Under California probate code&17000 (a) there is a probate exception baring in personam issues on trust matters to be heard in a state civil court. As result memorandum would be a denial of the right affirmed by the Supreme Court in

abrogating the federal probate exception to those issues. But as well this above probate code is conflicting with the Re Marshall opinion and the U.S. constitution. The memorandum is conflicting with the constitutional right which is reinforced by consequences by the Re Marshal Supreme Court ruling, to have a jury trial under the VII amendment of the U.S. constitution. There is an issue of judicial consistency and coherence among all rulings from state and federal courts in this case. The records in this case are conflicting with this memorandum's conclusion on those records. The ruling of the Supreme Court abrogating the probate exception on those matters has set a right on its own. To a certain extant the prior history of the case is irrelevant because all rulings and proceedings in this case were made in assumption that such right do not exist. So such right cannot be retrospectively preempted by a history which has been denying such right. The memorandum is not integrating the consequences of such right reaffirmed by the Supreme Court. Vecchioli is not afforded to know the rational of the court as referring to the merit of the remaining contention by the memorandum which let to believe to be an arbitrary decision in opposition to due process, international treaties, and not distinguishing the rem than in personam issues but letting them be confused.

A notification of constitutional question was filed on the 26 of June for the probate code &17000(a) as a result of the subject raised by the Ninth Circuit memorandum erroneously stating that plaintiff could have raised theses issues in state civil court.

Statement of reason

The issue here is about time sequences, derogatory by lower courts from Federal Jurisdiction, (*the law of the court creation),* from the Re Marshall opinion of this court, U.S. treaties, and on the mistake on computation of statute of limitation against DB. This is the result of the Ninth Circuit use to this case in its memorandum of *Manufactured home Cmtys. v. City of San Jose,* 420 F.3d 1022, 1025 (9th Circ.2005) which would establish Res Judicata "*because Vecchioli had or could had asserted the claims in probate and civil proceedings before the California courts" (Ninth Circuit memorandum and order of 06/13/07).*This point has already a first problem, probate code 17000 (a) (which its constitutionality is later discussed) prevents to present to state civil proceeding claims interpartes involving trust matters, contrary to federal civil court. So this above citation from Ninth Circuit is depriving arbitrarily to exercise a right express by the Re Marshall opinion of this court. What in substance the Ninth Circuit is doing, is exporting a state statute to prevent petitioner complaint in Personam but breaches *the law of court creation* which would give an original adjudicative right to federal court for the interpersonam matter. The Ninth Circuit is as well endorsing a sweeping rem adjudication of the in personam issues with no jury and no findings of facts. Basically Ninth Circuit is ignoring the distinction between in rem and in personam, but if that was, and then the present opinion of this court in Re Marshall would make no sense because it is based precisely on the distinction of the above. Therefore the distinction of rem and in personam is

not just a game but a fundamental stones of the entire judicial edifice. As well *the law of court creation* is a fundamental principle, because ultimately it is the constitution which is the guarantor of rights, if the law of court creation would be breached then the last resort of the constitution to protect right would be missed, and probate or local courts would be in power to reinvent rights base on the mood of the moment or locals political considerations. So *the law of court creation* is about the certainty of rights, some California judicial are practicing the relativity of the immediacy. Before this constitution was ever drafted, London once called Londinium was based and found by the stones of Rome, Athena and Peter creating the "opus certus" walls of the edifice of the constitution. *The law of court creation* or, court origin is the warrant of perenniality of rights through the wornness of times and fashions of the moment, as rem and in personam are sure and distinct stones of the rights; as fundamental to draft the constitution as the alphabets. The relativist opinion of the Ninth Circuit base on *Manufactured home Cmtys. v. City of San Jose,* 420 F.3d 1022,1025 (9th Circ.2005)(dismissal based on res judicata) **is so breaching the *law of court creation* and the constitution as it breached its perenniality and the above constitution article's quoted here , international treaties quoted here which would warrant the perenniality of rights under constitutional articles and amendments.** Additionally the Ninth Circuit court is in contradiction with." *McClellan v. Carland, 217 U. S. 268, 281 (1910) (upholding federal jurisdiction over action by heirs of decedent, who died intestate, to*

*determine their rights in the estate (citing Waterman, 215 U. S. 33)).*" and with this present court opinion on the Re Marshall as this court stated and discussed.

*"It is also clear, however, that Texas may not reserve to its probate courts the exclusive right to adjudicate a transitory tort. We have long recognized that "a State cannot create a transitory cause of action and at the same time destroy the right to sue on that transitory cause of action in any court having jurisdiction." Tennessee Coal, Iron & R. Co. v. George, 233 U. S. 354, 360 (1914). Jurisdiction is determined "by the law of the court's creation and cannot be defeated by the extraterritorial operation of a [state] statute .... even though it created the right of action."*

*Ibid. Directly on point, we have held that the jurisdiction of the federal courts, "having existed from the beginning of the Federal government, [can] not be impaired by subsequent state legislation creating courts of probate." McClellan v. Carland, 217 U. S. 268, 281 (1910) (upholding federal jurisdiction over action by heirs of decedent, who died intestate, to determine their rights in the estate (citing Waterman, 215 U. S. 33)). Our decision in Durfee v. Duke, 375 U. S. 106 (1963), relied upon by the Ninth Circuit, 392 F. 3d, at 1136, is not to the contrary".*
*(Re Marshall 04-1544 Pp16-17-18)*

**B) Additionally the probate action in a sweeping adjudication of the inter partes by the rem created a situation in which the issues in personam were neither fully nor fairly litigated.** As well because under the VII Amendment, in suit at common law, where the value in controversy shall exceed twenty

dollars, the rights of trial by jury shall be preserved, and the followings other IV ,V, VII, IX, XIV, Amendment of U.S. Constitution were breached.

Because of Durfee *v. Duke, 375 U. S. 106 (1963), relied upon by the Ninth Circuit, 392 F. 3d, at 1136 and (Allen v. McCurry 449* U.S. *90)* they are no res judicata and Manufactured *home Cmtys. v. City of San Jose,* 420 F.3d 1022,1025 (9th Circ.2005) is in contradiction with the above case" *Durfee stands only for the proposition that a state court's final judgment determining its own jurisdiction ordinarily qualifies for full faith and credit, so long as the jurisdictional issue was fully and fairly litigated in the court that rendered the judgment. See 375 U. S., at 111, 115. At issue here, however, is not the Texas Probate Court's jurisdiction, but the federal courts' jurisdiction to entertain Vickie's tortious interference claim." (04-1544 Pp16-17-18) ," collateral estoppels cannot apply when the party against* whom *the earlier decision is asserted did not have a "full and fair opportunity" to litigate that issue in the earlier case. Montana v. United States, supra, at 153, 99 S.Ct., at 973; Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation, supra, 402 U.S., at 328-329, 91 S.Ct., at 1443." (Allen v. McCurry 449* U.S. *90)*

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C) Additionally because of the above, probate code &17000(a) is breaching the constitution as it prevent to inter partes claims to be presented to any court than the probate court, under California single judge probate court and prevent full faith and credit. Additionally" *Under our federal system, Texas cannot render its probate courts exclusively competent to*

*entertain a claim of that genre."(Re Marshall Supreme Court 04-1544 p18)*
Such would be the same for California and the above probate code article which cannot render its probate courts exclusively competent neither the ninth circuit can state exclusive competency to the state to entertain prior claims. Basically **the ninth circuit memorandum is following the spirit of the above probate code &17000(a) and is entering in contradiction with Re Marshall Durfee and McCurry**
**D)** Claims bring by plaintiff in his complaint are under Federals laws, under diversity statute, proceed from federals rights established by international treaties and are inter partes torts. If the State can create transitory cause of action it cannot retains for itself the exclusive jurisdiction on it, except the narrow limits define by the probate of a will. On the other hand the Federal Judicial power can retains exclusive jurisdiction on matters as by example in this case international treaties, and Article III section two which give exclusive jurisdiction to the Federal Judicial
Memorandum breached article III because ninth circuit and Manufactured *home Cmtys.v. City of San Jose,* 420 F.3d 1022, 1025 did not contemplate the issues which under **Article III gives exclusive jurisdiction to federal court and so petitioner was in no obligation to present those issues in State Probate court.**
**E)** After the filing of the in personam federal action Vecchioli dismissed the probate proceeding in rem. The action were concurrent and parallel not interfering in each other and not successive. "*But federal jurisdiction over an action does not terminate automatically on the entry of judgment in the state*

*court." Id. (emphasis added) (citations omitted) Exxon Mobil Corp v. Saudi Basic Indus. Corp., 125 S. Ct. 1517 (2005).* Additionally as described in Markham *326 U.S. 490, 494 (1946)* and supported by the Supreme Court in the Marshall case, the in personam action does not constitute an interference with the rem probate. Therefore base on the above, petitioner had no obligation to raise the issues in probate proceedings as the rem and in personam are different issues.

**Ninth circuit statement and Manufactured home Are conflicting with Exxon, Markham and Re Marshall as it did not contemplate the distinction between Rem and in Personam.**

**F) Theses claims protected by international treaties are under exclusive federal jurisdiction, the federals preclusions laws are the one applicable.** The federal action with claims protected by international treaties is an in personam action for torts different from the probate rem issues, federal preclusion laws cannot be impaired by successive state statutes creating probates laws. Memorandum did not contemplated federal preclusion laws but refers to the state law as the law applicable as if the complaint would be defacto a rem probate action when it is not.

**G the Ninth Circuit erred on matter of statute of limitation on DB** in relative claims discussed. As stated above this complaint has been addressed after a result of chain of events and a chain of torts (including those claims which DB required statute of

limitation) culminating in a fraudulent transaction consummated the 07/02/005 (this transaction is a tort which embodied all the precedent torts.) By example claims against DB for shutting oil wells are part of the action which ends up with the sale in 2002, so claiming against the sell it is claiming to all up streams claims as a continuous claim leading to the transaction). All the torts prior and the tort created at the moment of the consummation of the sale are all connected in a one single tort and all connected and cause or part the 2002 fraudulent and bribed so call "sell".
Less than three years after the closing of this transaction, this complaint was deposed the 06/24/05. The older claims were tolled by a tolling agreement since 1995. Additionally those claims were stayed and deposed in the probate court since 1997 trough the damage complaint against both trustees. In 2005 when the probate court declined to have jurisdiction on those matters but limited herself to the rem, those claims were embodied in the federal inter partes torts claims in the in personam action. Therefore Ninth Circuits memorandum breached torts laws; erred in the computation of times as for statute of limitation and improperly imported state laws impairing the federal jurisdiction in this matter to computation of statute of limitation for those torts. Additionally theses claims in particular those under international treaties are under exclusive federal jurisdiction, the whole complaint base on torts admitted to federal civil court by abrogation of the probate exception is submitted to federal preclusive rights. So memorandum erred in considering California laws the applicable law for the scope of statute of

limitation and claims against DB are not bared by statute of limitation.
Additionally DB lawyers are part of a consultative committees on rules for the Ninth Circuit, no discussion were handled as for potential conflict of interests which might have led to a discriminatory attitude toward Vecchioli.

**H) Ninth circuit memorandum breached international treaties**

French American treaty 11 UST 2398 Article I, III, IV, VII, XIII (1960)
Italian American TIAS 1965 article I, IV, V (1949) and 12 UST 131 Article I (1961).
stated the parties shall enjoy freedom of access in all degree of jurisdiction both in pursuit and in defense of their rights, the most constant protections for their properties, investment rights under applicable laws and the full protection required by international laws and national treatment and Bilateral Investment Treaties between US and EU were as well breached by lower courts.

## CONCLUSORY STATEMENT

The probate exception was by this court repelled because it offends principles of justice and it allowed all kinds of probate abuses. But Markham and the latest opinion of this court on re Marshall would have no sense if rem and in personam would not be precisely distinct. The Ninth Circuit memorandum

improperly imported state statute breaching *the law of court creation* and impaired federal jurisdiction as to those in personam tort matters presented in this present complaint. Ninth Circuit Memorandum ignored that those claims could not have an opportunity of fair hearing as a consequence of California Probate Code &17000(a); and did not have due process as required by constitution and denies jury trial constitutional rights. As well rights protected by those international treaties to access to all degree of court and most protections in properties and required due process. Arbitrary adjudication of the in personam by the rem is violating the principle of due process warranted by those treaties, constitution and Supreme Court case as Marshall Durfee and McCurry.

Additionally *the law of court of creation* to protect original federal jurisdiction is the guarantee of the constitution, in preventing local entities to rewrite rights based on local consideration. On this issue then the clear differentiation between rem and in personam is necessary.

They are consequences in this case as to preclusion effect in the respect of *the law of court creation* preventing improper import of state statute. As well it is necessary to confront the constitutionality issues in respect to California probate code &17000 (a).

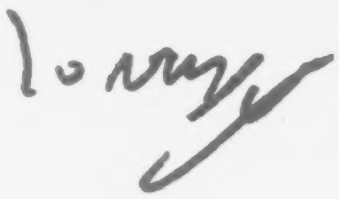
This petition is of public utilities as decision on this can make easier to trust beneficiaries to protect themselves from trustee power abuses.

It is as well necessary to adjudicate under those above treaties protecting bilateral investment from both treaty parties giving confidence and security to

mutual investment, freedom of access to all degree of court and protection of properties.

U.S. government and judiciary branches must enforce the respect of those treaties which are laws and must give to plaintiff access to proper remedies. Therefore Petitioner Lorenzo Vecchioli prays this court to grant petition for writ of certiorari.

Lorenzo Vecchioli 12/01/07



UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED JUL 25 2007
CATHY A. CATTERSON, CLERK ;

COURT OF APPEALS C. No. 05-17290
DOCKETED

D.C. No. CV 05-2590-PJH
Northern District Of California

Plaintiff- Appellant /

LORENZO VECCHIOLI

Defendants – Appellees/
BOREL PRIVATE BANK &- TRUST COMPANY, a California corporation: on its own behalf and as Trustee of the Andre LeRoy Trust; et al,,

ORDER:
Before:LEAVY, RYMER,
and T.G. NELSON,Circuit Judges.

The petition for panel rehearing is denied. No further filings will be accepted in this closed case.